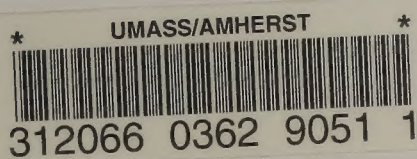


MASS. CA 22-3: 96-2



Transfer Bulletin

Bulletin 96-2

April 10, 1996

GOVERNMENT DOCUMENTS
COLLECTION

NOV 13 1997

University of Massachusetts
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Massachusetts
Cable Television
Commission

John D. Patrone
Commissioner

To the Issuing Authorities of Communities Licensed to Continental Cablevision and Other Interested Parties:

You may be aware that U S WEST, the Denver-based regional Bell operating company, is merging with Continental Cablevision, Inc. of Boston. Continental, the state's largest cable operator, currently holds 108 franchises in Massachusetts, with another 11 expected to be added after the closing of a pending system trade with TCI, for a total of 119 franchises.

In light of the burden facing issuing authorities to read and digest U S WEST's prospective transfer application, hold a public hearing(s), and issue a decision, as well as the considerable burden placed on U S WEST to respond to 119 separate jurisdictions, the Commission has consulted with both companies, with a number of municipal consultants and with issuing authorities themselves about ideas to streamline the process. The goal has been to facilitate a thorough, timely and efficient issuing authority review of the transaction.

As a result of these discussions, on April 1, 1996, Continental Cablevision requested that the Commission allow for two regional hearings on the transfers in lieu of 119 separate hearings in each of the communities licensed to Continental. (Copy attached.) Continental makes this request in light of what it calls the "daunting" challenge of obtaining 119 transfer approvals within the 120 day period allowed under federal law. 47 U.S.C. §537 (§617 of the Cable Act). Continental further suggests that the Commission appoint a hearing officer to "summarize information and provide a report to the Issuing Authorities regarding U S WEST's legal, technical, financial and managerial qualifications" following these regional hearings.

Our judgment on these requests has been guided by the applicable state and federal laws. Specifically, §7 of M.G.L. c.166A states (in pertinent part) that "[n]o license or control thereof shall be transferred or assigned without the prior written consent of the issuing authority, which consent shall not be arbitrarily or unreasonably withheld. Such consent shall be given only after a hearing upon a written application therefor on forms to be prescribed by the commission." Under the Commission's new transfer regulations, 207 CMR 4.00 (December 1995)(copy attached), the issuing authority is required to hold the transfer hearing within 60 days of receiving the transfer application. As the rules now require, U S WEST will file the five page FCC Form 394 transfer form with each issuing authority, rather than the Commission's voluminous Form 100, *which is no longer required for transfers*. Those filings are expected to take place in May. Further, the legal standard that applies to approving or

denying the transfer is quite narrow. The issuing authority may consider "*only* the transferee's (a) management experience, (b) technical expertise (c) financial capability and (d) legal ability to operate a cable system under the existing license." 207 CMR 4.04(1)(a)-(d). Finally, under federal law, 47 U.S.C. §537, the transfer is deemed approved if the issuing authorities take no action within 120 days after the filing.

With these rules in mind, the Commission has carefully considered Continental's request. We agree with Continental that to abide by the normal process of license transfers would be an overwhelming task, not only for the companies involved, but also the issuing authorities. However, because the Commission is the appellate body for any transfer denials, it cannot assume any formal role in the *initial*, local review of the transfer application. Recognizing the burdens involved to all parties, the Commission will grant Continental's *general* request to allow issuing authorities to join together for regional hearings to fulfill the hearing requirement of 207 CMR 4.03.

Further, in light of the significant public interest in assessing the capabilities of the transferee, the Commission has rejected Continental's request to hold only two public hearings. Instead, the Commission finds that the public interest of the citizens of the Commonwealth would be best served in this instance with regional hearings in Continental's service areas. Accordingly, we have tentatively designated the following eight (8) municipalities to serve as regional hearings sites: **Barnstable, Brockton, Burlington, Fall River, Lowell, Newton, Northampton, and Springfield**. We are also considering scheduling a daytime hearing in Boston to allow for further testimony.

Continental has further suggested that the Commission designate a hearing officer to coordinate the hearings, which we agree would facilitate local review. However, in light of our appellate role in the event of a transfer denial, we find that it would be inappropriate for the Commission's *regular* staff to play such a direct role. Instead, the Commission will designate a special magistrate to facilitate the nine regional hearings. The special magistrate will conduct the hearings, coordinate and review information compiled at the hearings and make *non binding* recommendations to all involved issuing authorities for their ultimate approval or denial. The magistrate will be responsible for compiling information about the merger that involves U S WEST's ability to "step into the shoes" of Continental Cablevision. *Bay Shore Cable TV Associates v. Weymouth*, Docket No. A-55 at 3 (November 13, 1985). U S WEST has agreed to reimburse the Commission for all expenses associated with these regional hearings.

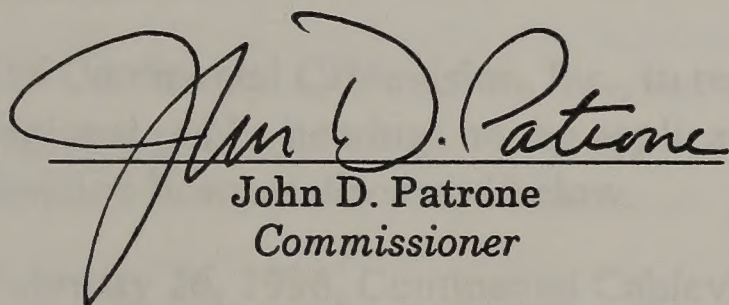
After the hearings, each issuing authority will have to approve or deny the transfer, keeping in mind that, as noted above, the transfer is deemed approved under federal law if the issuing authority takes no action within 120 days. Thus, at its option, the issuing authority may allow the 120 time period to expire and have the transaction deemed approved.

We expect that most municipalities will want to consider the matter and make a formal decision to approve or deny the transfer. Likewise, we expect most will want to take advantage of the regional hearing in their area rather than convene a separate hearing,

especially in light of the fact that Continental has said that U S WEST officials will likely be available for the regional hearings. However, recognizing the primary right of the issuing authority in licensing cable operators under state law, *any issuing authority which would prefer to hold a separate hearing has the right to opt-out of the regional hearing process.*

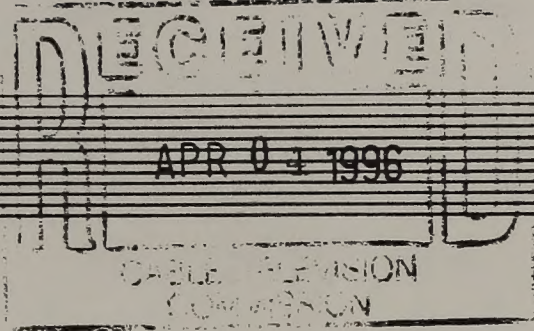
Accordingly, please advise the Commission no later than **May 1, 1996** if you would like to hold a separate hearing on this matter. Otherwise, we will presume that you will participate in the regional hearing in your area.

We look forward to assisting each community as it enters this transfer process. In the meantime, please do not hesitate to contact the Commission if you have any questions about this matter. Please direct all inquiries to Martha M. Leavitt, the Commission's Municipal Liaison, at 617 727 6925.



John D. Patrone
Commissioner

pat/cableo/newest.tra



**Continental
Cablevision**

April 1, 1996

Mr. John D. Patrone
Commissioner
Massachusetts Cable Television Commission
100 Cambridge Street, Room 2003
Boston, MA 02202

Dear Commissioner Patrone:

I am writing on behalf of Continental Cablevision, Inc., to request that the Commission conduct regional public hearings on the applications for the transfer of control of the cable television licenses discussed below.

As you are aware, on February 26, 1996, Continental Cablevision entered into a merger agreement with US WEST, Inc. Under the merger, Continental Cablevision, Inc. will merge into US WEST, Inc., but all subsidiary corporations will remain in place and unchanged. That means, for example, that Continental Cablevision of Massachusetts, Inc. and other subsidiaries, will continue to hold the licenses in Massachusetts. Continental's cable television systems will become the nucleus of the US WEST Media Group's cable operation, with existing Continental management and employees continuing to direct and service these operations. This agreement will transfer control of Continental's 108 cable television licenses in Massachusetts to US WEST, Inc. (For ease of reference, I have attached a list of these municipalities.)

In addition, Continental has entered into an asset exchange agreement with TCI under which Continental is trading systems located in the St. Louis, Missouri area for 11 Massachusetts properties.

In sum, under applicable State law and regulation, Continental must transfer a total of 119 licenses; 108 existing Continental licenses plus 11 TCI licenses in a two step transfer process, first to Continental and then to US WEST.

The task of completing 119 transfer applications, conducting the same number of public hearings and obtaining the necessary consents, all within the federally mandated time frame of 120 days is daunting. In its Report and Order amending 207

April 1, 1996

John D. Patrone, Commissioner

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CMR 4.00, Transfer or Assignment of Control of a Final License, the Commission stated:

“In revising its regulations, the Commission has sought to reduce the administrative burden and uncertainty surrounding the license transfer process. The Commission’s goal is to streamline its regulations so that both Issuing Authorities and cable operators may function in a predictable and simplified regulatory environment and make the transfer process more effective and efficient.” In Re-Amendment of 207 CMR 4.01 - 4.06, Docket Number R-24, Report and Order.

The Commission has achieved this goal in the application process and Continental is requesting that the Commission extend this policy to the public hearing arena by permitting regional hearings on the transfer applications referenced above. Continental believes that such a process would comply with applicable law and regulation, and would be consistent with Commission precedent and policy. Regional hearings will “streamline” and simplify the process, and will “make the transfer process more effective and efficient”.

Continental is therefore requesting that the Commission conduct two regional hearings, one in eastern Massachusetts and one in the western part of the State. All costs associated with the hearings would be borne by Continental. Regional hearings will establish an organized, orderly process to determine whether US WEST has the requisite qualifications to “step into the shoes” of Continental. Conducting two hearings will enable the people with the most knowledge of the transaction and its likely affect on Continental’s local systems to be in attendance and speak directly to the issues. We cannot make that guarantee if 119 hearings are required.

Upon request, a tape of the hearings can also be furnished to each Issuing Authority for review, and copies of any written questions and the responses would also be provided. This will insure that all Issuing Authorities have access to the most

April 1, 1996

John D. Patrone, Commissioner

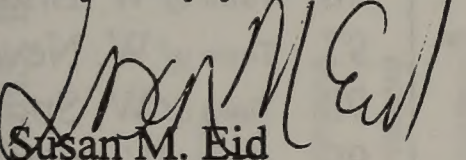
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complete record in a timely manner and will be better able to make an informed decision.

To further assist the communities, it would also be reasonable to have the designated hearing officer summarize the information and provide a report to the Issuing Authorities regarding US WEST's legal, technical, financial and managerial qualifications.

In conclusion, the Commission will serve the public interest by acting as a public hearing facilitator for cities and towns. Establishing a streamlined, efficient process for review of the transfer applications will greatly assist municipalities in the decision making process. As the Commission stated in its Report and Order, "The Commission's role must be flexible given the current trends of the telecommunications industry". This unique situation calls for the Commission to adopt innovative solutions and Continental respectfully asks the Commission to give full consideration to this request.

Very truly yours,



Susan M. Eid

Vice President and Corporate Counsel

SME/kac

ATTACHMENTS

MASSACHUSETTS

FRANCHISES

By: Kim Hayden 3/1/96

- | | | |
|-----------------------------------|-----------------------------------|-------------------------------------|
| 1. <i>City of Agawam *</i> | 39. <i>Town of Hull</i> | 77. <i>Town of Saugus</i> |
| 2. <i>Town of Arlington</i> | 40. <i>Town of Huntington *</i> | 78. <i>Town of Scituate</i> |
| 3. <i>Town of Avon</i> | 41. <i>Town of Ipswich</i> | 79. <i>Town of Sherborn</i> |
| 4. <i>Town of Berkley</i> | 42. <i>Town of Lakeville</i> | 80. <i>Town of South Hadley *</i> |
| 5. <i>Town of Bernardston *</i> | 43. <i>Town of Lancaster</i> | 81. <i>Town of Southwick *</i> |
| 6. <i>City of Beverly</i> | 44. <i>City of Lawrence</i> | 82. <i>City of Springfield *</i> |
| 7. <i>Town of Billerica</i> | 45. <i>Town of Longmeadow *</i> | 83. <i>Town of Sterling</i> |
| 8. <i>Town of Bolton</i> | 46. <i>City of Lowell **</i> | 84. <i>Town of Stoneham</i> |
| 9. <i>Town of Boxford</i> | 47. <i>Town of Marblehead</i> | 85. <i>Town of Stoughton</i> |
| 10. <i>Town of Brewster</i> | 48. <i>Town of Marion</i> | 86. <i>Town of Sunderland *</i> |
| 11. <i>City of Brockton</i> | 49. <i>City of Marlborough</i> | 87. <i>Town of Tewksbury **</i> |
| 12. <i>Town of Burlington</i> | 50. <i>Town of Mashpee</i> | 88. <i>Town of Topsfield</i> |
| 13. <i>City of Cambridge</i> | 51. <i>Town of Mattapoisett</i> | 89. <i>Town of Truro</i> |
| 14. <i>Town of Chelmsford **</i> | 52. <i>City of Methuen</i> | 90. <i>Town of Wareham</i> |
| 15. <i>Town of Chester *</i> | 53. <i>Town of Middleborough</i> | 91. <i>Town of Watertown</i> |
| 16. <i>Town of Clinton</i> | 54. <i>Town of Milford</i> | 92. <i>Town of Wayland</i> |
| 17. <i>Town of Cohasset</i> | 55. <i>Town of Milton</i> | 93. <i>Town of Wellesley</i> |
| 18. <i>Town of Conway *</i> | 56. <i>Town of Nahant</i> | 94. <i>Town of Wellfleet</i> |
| 19. <i>Town of Dartmouth **</i> | 57. <i>Town of Natick</i> | 95. <i>Town of Wenham</i> |
| 20. <i>Town of Dedham</i> | 58. <i>Town of Needham</i> | 96. <i>Town of W. Bridgewater</i> |
| 21. <i>Town of Deerfield *</i> | 59. <i>City of New Bedford **</i> | 97. <i>Town of W. Newbury</i> |
| 22. <i>Town of Dighton</i> | 60. <i>Town of Newbury</i> | 98. <i>Town of W. Springfield *</i> |
| 23. <i>Town of E. Bridgewater</i> | 61. <i>City of Newburyport</i> | 99. <i>City of Westfield *</i> |
| 24. <i>Town of Eastham</i> | 62. <i>City of Newton</i> | 100. <i>Town of Westhampton *</i> |
| 25. <i>Town of Easton</i> | 63. <i>Town of North Andover</i> | 101. <i>Town of Weston</i> |
| 26. <i>City of Fall River **</i> | 64. <i>City of Northampton *</i> | 102. <i>Town of Whately *</i> |
| 27. <i>Town of Freetown</i> | 65. <i>Town of Northfield *</i> | 103. <i>Town of Whitman</i> |
| 28. <i>Town of Granby *</i> | 66. <i>Town of Norwell</i> | 104. <i>Town of Williamsburg *</i> |
| 29. <i>Town of Granville *</i> | 67. <i>Town of Orleans</i> | 105. <i>Town of Wilmington</i> |
| 30. <i>Town of Hamilton</i> | 68. <i>Town of Phillipston</i> | 106. <i>Town of Winchendon</i> |
| 31. <i>Town of Hanover</i> | 69. <i>Town of Provincetown</i> | 107. <i>Town of Winchester</i> |
| 32. <i>Town of Hanson</i> | 70. <i>City of Quincy</i> | 108. <i>City of Woburn</i> |
| 33. <i>Town of Hatfield *</i> | 71. <i>Town of Randolph</i> | |
| 34. <i>Town of Hingham</i> | 72. <i>Town of Raynham</i> | |
| 35. <i>Town of Holbrook</i> | 73. <i>Town of Reading</i> | |
| 36. <i>Town of Holland *</i> | 74. <i>City of Revere</i> | |
| 37. <i>City of Holyoke *</i> | 75. <i>Town of Rochester</i> | |
| 38. <i>Town of Hopkinton</i> | 76. <i>Town of Rowley</i> | |

* *Western Mass.*

** *Colony Transfer - eff. 10/5/95*

Misc.:

Attleboro (Inland Cable)

Rehoboth (Inland Cable)

Upton (Crockett Road only)

PENDING TELE-COMMUNICATIONS, INC. ("TCI") TRANSFERS - APPROX. 100,000 CUSTOMERS

CUID#	SUB. NAME	FRANCHISE	LOCAL FRANCHISE AUTHORITY	MAILING ADDRESS	TOWN/CITY	ST	ZIP
MA0172		Town of Andover	Board of Selectmen	Andover Town Hall 36 Bartlett Street	Andover	MA	01810
MA0169		Town of Dracut	Board of Selectmen	Dracut Town Hall 62 Arlington Street	Dracut	MA	01826
MA0171		Town of North Reading	Board of Selectmen	North Reading Town Hall 235 North Street	North Reading	MA	01864
MA0223		Town of Middleton	Board of Selectmen	Middleton Town Hall 48 South Main Street	Middleton	MA	01949
MA0261		City of Waltham	Mayor (William F. Stanley)	Waltham City Hall 610 Main Street	Waltham	MA	02154
MA0039		Town of Barnstable	Town Manager (Warren J. Rutherford)	Barnstable Town Hall 367 Main Street	Barnstable	MA	02601
MA0058		Town of Chatham	Board of Selectmen	Chatham Town Hall 549 Main Street	Chatham	MA	02633
MA0041		Town of Dennis	Board of Selectmen	Dennis Town Hall 485 Main Street	South Dennis	MA	02660
MA0040		Town of Harwich	Board of Selectmen	Harwich Town Hall 732 Main Street	Harwich	MA	02645
MA0045		Town of Nantucket	Board of Selectmen	Nantucket Town Hall 16 Broad Street	Nantucket	MA	02554
MA0006		Town of Yarmouth	Board of Selectmen	Yarmouth Town Hall 1146 Route 28	Yarmouth	MA	02664

207 CMR 4.00: TRANSFER OR ASSIGNMENT OF CONTROL OF A FINAL LICENSE

Section

- 4.01: Transfer of Control
- 4.02: Application for Transfer
- 4.03: Hearing and Notice Requirements
- 4.04: Standard of Review
- 4.05: Issuing Authority Report
- 4.06: Waiver

4.01: Transfer of Control

- (1) A transaction through which a person (or other entity), a family group, or a group of persons (or entities) acting in concert, gains or loses control of a license or licensee shall constitute a transfer or assignment of a license or control thereof under M.G.L. c. 166A, § 7.
- (2) A transfer or assignment of a license or control thereof between commonly controlled entities, between affiliated companies, or between parent and subsidiary corporations, shall not constitute a transfer or assignment of a license or control thereof under M.G.L. c. 166A, § 7. Under 207 CMR 4.00, an "affiliated company" is any person or entity that directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with another person or entity.
- (3) On request of a cable operator, an issuing authority or on its own initiative, the Commission may determine whether or not a particular transaction shall be considered a transfer or assignment of a license or control thereof under M.G.L. c. 166A, § 7.

4.02: Application for Transfer

- (1) An applicant for transfer or assignment of a license or control thereof shall file with the affected community Federal Communications Commission Form 394, as it may be amended from time to time, accompanied by the required \$100 application fee. As such application is received, it shall be made available for public inspection in the city or town clerk's office during regular business hours and for reproduction at a reasonable fee. Simultaneously with the community filing, the applicant shall file a copy of any such FCC Form 394 with the Commission. In instances in which there are several affected communities, and the FCC Form 394 for each one contains identical attachments, an applicant may file just two sets of attachments with the FCC Form 394 filed with the Commission.
- (2) The issuing authority shall have 120 days from the filing of a completed FCC Form 394 to take final action on it. Requests for additional information by the issuing authority will not toll the 120 day review period unless the issuing authority and the applicant agree to an extension of time.

4.03: Hearing and Notice Requirements

Within 60 days after the filing of the application, the issuing authority shall hold public hearing(s) to consider the desirability of approving the transfer. The issuing authority shall insure that the transferor and transferee, residents, and other interested parties are afforded full and fair opportunity to be heard. Notice of such hearing(s) shall explicitly call attention to the availability of the application for public inspection.

207 CMR: COMMUNITY ANTENNA TELEVISION COMMISSION

The notice of the public hearing shall identify its time, place and purpose. The notice shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication being not less than 14 days before the day of any such hearing(s). If there is no newspaper in the city or town, the issuing authority shall post such notices in a conspicuous place in the city or town hall not less than 14 days before the day of the hearing(s).

Within an area served by an operating cable system and having cablecasting facilities, the licensee shall cablecast the notice (or a concise summary) over its facilities at least twice a week, on separate days, during each of the two weeks preceding the hearing date. The notice shall be cablecast at times most likely to reach the maximum viewing audience. The log of the cablecasts shall be incorporated in the record of any hearing conducted pursuant to 207 CMR 4.00. The issuing authority may also require the notice (or a concise summary) to be broadcast on radio at such times, and with such frequency, as the issuing authority deems appropriate to serve the public interest.

The issuing authority shall provide for a stenographic, video or other tape record of the hearing(s). The issuing authority may choose the recording methodology. The applicant shall bear the cost of the recording.

4.04: Standard of Review

(1) In reviewing an application for a transfer or assignment of a license or control thereof, an issuing authority shall consider *only* the transferee's

- (a) management experience,
- (b) technical expertise,
- (c) financial capability, and
- (d) legal ability

to operate a cable system under the existing license.

(2) As part of an issuing authority's review of an application for a transfer or assignment of a license or control thereof, an issuing authority shall not propose amendments to or renegotiate the terms of the existing license or any license renewal proposal.

4.05: Issuing Authority Report

Within ten days of taking final action on any FCC Form 394, the issuing authority shall send the Commission a letter summarizing the action taken. If an issuing authority denies the application, it shall set forth a detailed statement of reasons for the denial in the letter to the Commission.

4.06: Waiver

Consistent with the public interest, upon receipt of a request from an issuing authority, a cable operator, or upon its own initiative, the Commission may, waive any particular provision of 207 CMR 4.00 for good cause shown.

REGULATORY AUTHORITY

207 CMR 4.00: M.G.L. c. 166A, §§ 7 and 16.